

CLAIMS WITH MARKINGS TO SHOW AMENDMENTS

What is claimed is:

1. (Amended) A [new and improved] ball valve assembly for use in combination with a ground mounted fire hydrant, the assembly comprising in combination:

a fire hydrant housing having a lower extent, an upper extent and an intermediate extent therebetween, a base flange secured intermediate the upper and lower extents for use in securing the hydrant to the ground such that the lower extent extends into the ground, three outlets formed within the upper extent to the hydrant;

5, a water passage formed within the lower extent of the hydrant housing, three flexible fluid couplings, each of the fluid couplings interconnecting the water passage to one of the three outlets formed within the upper extent of the housing;

a ball valve rotatably secured within the water passage a fluid passage formed within a diameter of the ball valve, the ball valve having a first orientation wherein the ball valve prevents the flow of fluid within the water passage, and a second orientation wherein fluid is permitted to flow through the fluid passage of the ball valve and within the water passage;

a pair of rotatable control rods extending along the upper and lower extent of the hydrant housing, each of the control rods interconnected to a bevel gearing for use in controlling the orientation of the ball valve, thus rotation of the control rods

in a first sense functioning to bring the ball valve into the first orientation, while rotation of the control rods in a second sense functioning to bring the ball valve into a second orientation.

2. (Amended) A [new and improved] ball valve assembly for use in combination with a ground mounted fire hydrant, the assembly comprising in combination:

a first hydrant housing having a lower extent, an upper extent and an intermediate extent therebetween, a base flange secured intermediate the upper and lower extents for use in securing the hydrant to the ground such that the lower extent extends into the ground, a number of outlets formed within the upper extent of the hydrant;

a water passage formed within the lower extent of the hydrant housing, a number of flexible fluid couplings, each of the fluid couplings interconnecting the water passage to one of the outlets formed within the upper extent of the housing;

a ball valve rotatably secured within the water passage, a fluid passage formed within a diameter of the ball valve, the ball valve having a first orientation wherein the ball valve prevents the flow of fluid within the water passage, and a second orientation wherein fluid is permitted to flow thorough the fluid passage of the ball valve and within the water passage;

control means for effecting the orientation of the ball valve.

3. (As issued) The hydrant as described in Claim 2 wherein the control means includes:

a pair of rotatable control rods extending along the upper and lower extent of the hydrant housing, the control rods being interconnected to the ball valve such that rotation of the control rods in a first sense functioning to bring the ball valve into the first orientation, while rotation of the control rods in a second sense functioning to bring the ball valve into a second orientation.

4. (Amended) A [new and improved] ball valve assembly adapted to be secured to an enclosure, the assembly comprising in combination:

a length of pipe having a first end, a second end and an intermediate extent therebetween, a flange secured intermediate the first and second ends of the pipe for use in securing the length of pipe to a wall such that the length of pipe intermediate the first end and the flange extends into the existing enclosure, the second end of the length of pipe being bent at a 45 degree angle relative to the intermediate extent of the pipe;

a ball valve being rotatably secured within the pipe intermediate the first end and the flange, a fluid passage formed within the diameter of the ball valve, the ball valve having a first orientation wherein the ball valve prevents the flow of fluid within the pipe, and a second orientation wherein fluid is

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permitted to flow through the fluid passage of the ball valve and within the pipe; and

5. a lever having a first portion with a first end and a second portion with a first end and a second end, a second portion with a first end and a second end and an intermediate extent therebetween, the first end of the first portion being pivotally interconnected to the ball valve, the lever functioning to bring the ball valve from the first to the second orientation, the first end of the second [end] portion of the lever being positioned and secured proximate to the second end of the pipe, the intermediate extent of the lever including the second end of the first portion being pivotally connected to the [intermediate extent of the pipe] first end of the second portion, thus the lever enables a user to manipulate the second end of the second portion and control the orientation of the ball valve from outside the enclosure.

5. (Amended) A [new and improved] ball valve assembly adapted to be secured to an enclosure, the assembly comprising in combination:

a horizontally disposed length of pipe having a first end, a second end, an intermediate extend therebetween, a vertically disposed flange secured intermediate the first and second ends of the pipe for use in securing the length of pipe to a vertically disposed wall such that the length of pipe intermediate the first end and the flange extends into the existing enclosure; ;

a ball valve being rotatably secured within the pipe, a fluid passaged formed within a diameter of the ball valve, the ball valve having a first orientation wherein the ball valve prevents the flow of fluid within the pipe, and a second orientation wherein fluid is permitted to flow through the fluid passage of the ball valve and within the pipe;

a lever having a first end, a second end and an intermediate extent therebetween, the first end being pivotally interconnected to the ball valve, the lever functioning to bring the ball valve from the first to the second orientation; and

the ball valve being positioned intermediate the first end of the pipe and the flange;

6. (Amended) The ball valve assembly as described in claim 5 wherein:

the second end of the length of pipe [being] is bent at a 45 degree angle relative to the intermediate extent of the pipe[;and

the ball valve is positioned intermediate the first end of the pipe and the flange].

[8]7. (Amended) The ball valve assembly as described in claim 5 wherein:

the second end of the lever [being] is positioned proximate to the second end of the pipe, and the intermediate extent of the lever being is pivotally connected to the intermediate extent of the pipe, thus the lever enables a user to control the orientation of the ball valve from outside the enclosure.

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REMARKS

This amendment is in response to the Office Action of May 22, 2003. In response to such amendment submitted herewith is a new declaration. The new declaration is believed to be proper and to overcome all of the various grounds of objection and rejection set forth by the Examiner in his most recent Office Action.

The Examiner is correct in referring to MPEP Section 1450 and the cases of *In re Watkinson*, *In re Orita*, and *In re Mead*, cases decided in 1977 and 1978 and 1990 directed to the proposition that a reissue cannot be based on the applicant's failure to timely file a divisional application. Such, however, is not the case before us wherein the reissue is founded upon the post issuance of discovery of an attorney error in understanding the scope of the present invention. Note *In re James R. Amos*, *Chester K. Greathouse and David S. Riddle*, 91-1298, United States Court of Appeals for the Federal Circuit, 953 Fed. 2d 613; 1991 U.S. App. LEXIS 30189, 21 U.S.P.Q.2D (BNA) 1271, December 31, 1991, Decided. The *Amos* case stands for the broad proposition of a prior attorney's error in understanding the scope of the invention and is a more recent decision than those relied upon the Examiner.

Note is taken in MPEP 1450(b) that 37 CFR 1.176, Examination of Reissue, states that:

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"If restriction is required, the subject matter of the original patent claims will be held to be constructively elected unless a disclaimer of all the patent claims is filed in the reissue application, which disclaimer cannot be withdrawn by applicant."

In this regard, a restriction is not deemed required in the present application. If, however, the Examiner insists on a restriction, then applicant elects Claims 4 - 7 as amended herein and provisionally cancels Claims 1 - 3.

Further, 37 CFR 1.178 refers to the surrendering of the original patent prior to the granting of the reissue. Please be aware that applicant stands ready to surrender his original patent in association with the allowance of this reissue application.

It is deemed that the instant application is in condition for allowance and defines subject matter patentable over the prior art for the reasons advanced in the unentered amendment of March 21, 2003, the remarks of which are reiterated herein below.

More specifically, the Examiner has indicated Claim 4 as being allowable subject to rendering the description of the lever more definite. This claim is to the embodiment of Figure 2 wherein the ball is inside the enclosure with the control by a user being outside of the building. Claim 5 has been amended to cover the embodiment when the ball is inside the enclosure and as the lever being broadly recited as inside or outside. This is found nowhere in the prior art. The Examiner has questioned the

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applicability of the hydrant art as exemplified by Fletter, U.S. Patent Number 287,815. This is deemed overcome by the amendment wherein the length of pipe is horizontally disposed while the flange and end wall are vertically disposed. The relationship of parts thus allows the ball to be insider the enclosure to preclude freezing and wherein the controls can be at any orientation. The Examiner's identification of the patent to Rittin, U.S. Patent Number 1,670,691 is deemed sufficiently close to prior claim 5 so that the broad language of prior Claim 5 has been restricted to have the ball inside the structure unsuggested by the prior art.

Reconsideration and a notice of allowance are respectfully requested.